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NOTES.

INTERFERENCE WITH BUSINESS OR EMPLOYMENT.—The principle that the intentional infliction of injury upon another which is lawful under certain circumstances without regard to the character of the motive prompting it, may yet give rise to a cause of action in favor of the injured party, when it takes place under other conditions, and with malevolent design, has found recognition in many well-reasoned decisions, ancient and modern, but can hardly be regarded as a well-settled rule of law. Yet many of the cases in which the doctrine has been repudiated seem not to have necessitated such a ruling, the acts complained of having taken place under circumstances which are everywhere regarded as relieving a defendant from liability notwithstanding the existence of an evil purpose—cases of malicious injury inflicted in the exercise of property or contract rights, in the course of dealings between persons standing in special relations with one another, or in carrying on fair business competition. The discussion of this principle in connection with cases of interference with business or employment where the acts causing injury were intended so to result, but were not of such a character as to be tortious *per se* as against the injured party, has been frequent and exhaustive. Of the mass of decisions on the point many are of little value because of a failure to define the precise nature of the acts of interference. There has been a lack of proper classification in this branch of the law, and the judges seem to have felt more or less free to deal with each situation as seemed best in the individual instance. In view of the complexity of a problem which involves matters of social sentiment, economic

law, and business policy, it is not strange, perhaps, that the solutions proposed have not been harmonious.

In the celebrated case of *Allen* v. *Flood* [1898] A. C. 1, two workmen sued a fellow servant for having maliciously induced the employer to dismiss them. The House of Lords, by a vote of six to three, were of the opinion that no recovery could be allowed, asserting that inasmuch as the defendant's act would have been lawful if done with a proper motive, it did not become unlawful because of the malicious design. Yet the judges of the lower courts were, by a large majority, in favor of granting relief, and their view seems finally to have prevailed in England, for the House in the recent case of *Quinn* v. *Leathem* [1901] A. C. 495, expressed its disapproval of the theory on which the *Flood* case was decided. In the later case, certain members of a trade union instituted a boycott for the purpose of punishing an employer who refused to discharge the non-union men in his shop, and were held liable for their conduct. It is true that the peculiar form of oppressive combination present in *Quinn* v. *Leathem* lent a different character to the acts of the defendants, but the court did not dispose of the case upon that ground alone; on the contrary, it appears to have held that a *prima facie* tort is made out whenever a plaintiff proves the infliction of an intentional injury; the defendant being then required to bring his conduct under one of the rules of privilege, if he would escape liability. See the analysis of these cases in 2 COLUMBIA LAW REVIEW, 37.

In America, the condition of the law as regards this question is hardly satisfactory. Perhaps most of the cases allow recovery where the acts amount to fraud, intimidation, or coercion with respect to a third party. However, so far as a plaintiff's rights are concerned, the fact that a defendant's conduct constitutes a tort against a third party would seem to be immaterial. It is believed that there is no distinction on principle between persuasion induced by falsehood and putting in fear, and mere malevolent advice which accomplishes the same result. HOLMES, C. J., in *Moran* v. *Dumphy* (1900) 177 Mass. 485.

In the recent case of *National Protective Ass. et al.* v. *Cumming et al.* (1902) 170 N. Y. 315 the members of a trade union sued persons belonging to a rival organization for having procured their discharge. It seems that the defendants objected to doing work with men not connected with their own body, and notified the employer that unless he dismissed the plaintiffs they would not continue in his service. The court were divided in their views of the inferences of fact proper to be drawn. Three members, adopting the rule rejected in *Allen* v. *Flood*, came to the conclusion that the conduct of the defendants was unjustifiable and hence that recovery should be allowed. On the other hand, the four judges of the majority were of the opinion that the damage complained of was done not for its own sake, but in the course of fair competition in the labor market, and thus was not actionable on any legal principle. But while one member of the prevailing side discussed the case only on

its facts, the others who reached the same result repudiated vigorously the principle within which recovery is allowed for injury inflicted without justification or excuse. Their opinion written by PARKER, C. J., seems to adopt substantially the view expressed by Lord HERSCHELL in the *Flood* case, the numerous American decisions on the point being given scant consideration. Yet it would seem that this question had already been settled adversely in New York, for in *Curran* v. *Galen* (1897) 152 N. Y. 33 the Court of Appeals decided that members of a union who had procured the dimissal of a workman, and by means of false statements, had induced employers not to hire him because he would not join their organization, must respond in damages for the injury caused. This was unfair competition. And whether competition be fair or not, in a given case, depends upon a delicate weighing of advantages, and a consideration of the business policy of the community.

STATE REGULATION OF LONG AND SHORT HAULS.—The Louisville and Nashville R. R. Co., defendant, charged twelve cents per pound for transporting tobacco from Nashville, Tenn., to Louisville, Ky.,—a distance of one hundred and eighty-five miles. From Franklin, Ky., to Louisville, one hundred and thirty-four miles,—a part of the Nashville-Louisville route,—the rate was twenty-five cents per pound. The lower rate over the interstate route was due to actual competition of river steamers and was, therefore, legal under the Interstate Commerce Act. *Harwell* v. *Columbus & W. R. Co.* (1887) 31 Am. & Eng. R. R. Cas. 640 (Interstate Commerce Commission). The plaintiff, Eubank, alleged a violation of the constitution of Kentucky (§ 218), by which a greater charge by a railroad for a short haul than for a long haul is in general forbidden. The company contended that such an interpretation of the Kentucky constitution amounted to State regulation of interstate commerce. This contention the Circuit Court of Kentucky denied. But, in an appeal to the Supreme Court of the United States, the defendant has been upheld. *Louisville & Nashville R. R. Co.* v. *Eubank* (1902) 184 U. S. 27.

In dealing with an Iowa "act to establish maximum rates of charges for the transportation of freight and passengers on the different railroads of this State," the Supreme Court has held: "* * * until Congress acts, the State must be permitted to adopt such rules and regulations as may be necessary for the promotion of the general welfare of the people within its own jurisdiction, even though in so doing, those without may be indirectly affected." *C. &c. R. R. Co.* v. *Iowa* (1876) 94 U. S. 155, 163. Confirmed in *Peik* v. *C. &c. R. Co.* (1876) 94 U. S. 164. But the results of this decision compelled the Court to retreat in *Wabash, &c. R. Co.* v. *Ill.*, (1886) 118 U. S. 557, 568, 569. A State has no right to regulate interstate commerce, directly or indirectly, whether or not Federal legislation exists. The power of the State to regulate purely internal commerce has been and still